

Message Text

UNCLASSIFIED

PAGE 01 OTTAWA 04934 102004Z
ACTION JUSE-00

INFO OCT-01 EUR-12 ISO-00 SSO-00 L-03 EB-07 COME-00
/023 W

-----102023Z 024649 /66

O 101955Z JUN 77
FM AMEMBASSY OTTAWA
TO SECSTATE WASHDC IMMEDIATE 3776

UNCLAS OTTAWA 04934

DEPT PASS JUSTICE

E.O. 11652: N/A
TAGS: OVIP, CA
SUBJECT: VISIT OF ATTORNEY GENERAL BELL - GOC CONCERNS
IN ANTITRUST FIELD

TO INSURE TIMELY RECEIPT EMBASSY REPEATING MESSAGE SENT
BY EXTAFF TO CANADIAN EMBASSY FOR DELIVERY TO TRIMBLE FOR
ROSENTHAL, DEPARTMENT OF JUSTICE:

BEGIN TEXT: WHERE ACTS COMPLAINED OF BY USA ANTI-TRUST
OFFICIALS ARE ACTS PERFORMED WITH THE AUTHORIZATION OR
ENCOURAGEMENT OF THE CDN GOVERNMENT, THE ISSUES RAISED
MAY NOT BE PURELY COMMERCIAL BUT MAY INVOLVE CDN NATIONAL
INTERESTS. APPLICATION OF THE PRINCIPLE OF COMITY IN SUCH
CASES CALLS FOR AN ASSESSMENT OF THE NATIONAL INTERESTS OF
BOTH COUNTRIES CONCERNED. IT IS RECOGNIZED, OF COURSE,
THAT WHERE NATIONAL INTERESTS ARE INVOLVED THEY SHOULD BE
SPECIFIC AND MADE KNOWN. THE ASSESSMENT OF RELATIVE
INTEREST MIGHT MOST USEFULLY BEGIN BY CONSULTATIONS BETWEEN
THE TWO GOVERNMENTS, INVOLVING REPRESENTATIVES OF ALL
GOVERNMENTAL DEPARTMENTS OR AGENCIES AFFECTED. THE
OBJECTIVE WOULD BE TO AVOID THE UNILATERAL IMPOSITION OF
SOLUTIONS BY RESORTING TO DOMESTIC LEGAL PROCEEDINGS TO
"RESOLVE" AN INTERGOVERNMENTAL POLICY DISPUTE. USA
UNCLASSIFIED

UNCLASSIFIED

PAGE 02 OTTAWA 04934 102004Z

ENFORCEMENT AUTHORITIES SHOULD BE ABLE TO EXERCISE
DISCRETION TO TAKE INTO ACCOUNT PRINCIPLES OF COMITY.

BECAUSE OF EXTENSIVE USA OWNERSHIP OF THE CDN ECONOMY,
PARTICULARLY IN THE RESOURCE AND MANUFACTURING SECTORS,
UNRESTRICTED APPLICATION OF THE "EFFECTS" DOCTRINE WOULD,
IN THE ABSENCE OF COUNTER-MEASURES BY CANADA, RESULT IN

USA LAW AND POLICY DISPLACING THAT OF CDA IN THE REGULATION OF CDN RESOURCE AND INDUSTRIAL DEVELOPMENT. IT IS NECESSARY TO EXAMINE THE LIMITS OF THE "EFFECTS" DOCTRINE AS IT IS APPLIED IN THE PARTICULAR INTERRELATIONSHIP OF THE CDN AND USA ECONOMIES.

THE DEFENCE OF "FOREIGN COMPULSION" SHOULD NOT BE CONFINED TO "MANDATED" CONDUCT SINCE, IN A SOCIETY AND ECONOMIC SYSTEM SUCH AS ARE COMMON TO CDA AND THE USA, GOVERNMENTS FREQUENTLY SEEK TO ACHIEVE POLICY OBJECTIVES BY MEANS OTHER THAN COMPULSORY LEGISLATION EMBODYING PENAL SANCTIONS. THE 1976 OECD GUIDELINES FOR MULTINATIONALS DISCLOSE A CLEAR INTENT THAT THE CONDUCT OF MULTINATIONALS SHOULD REFLECT HOST GOVERNMENT POLICIES. FOR ITS PART, CDA PROPOSES IN BILL C-42, THE COMPETITION ACT, TO MOVE TOWARDS GREATER SPECIFICITY AS TO THE INTERFACE BETWEEN PURELY PRIVATE ACTIONS AND THOSE REFLECTING GOVERNMENT POLICY.

SPECIALIZATION AGREEMENTS AND MERGERS TO BE CARRIED OUT IN CDA WHICH ARE APPROVED BY A COMPETENT CDN AGENCY (E.G. THE PROPOSED COMPETITION BOARD) SHOULD NOT SUBSEQUENTLY REQUIRE FURTHER SCRUTINY BY A NON-CDN AGENCY. USA ACTION WHICH WOULD HAVE THE EFFECT OF NULLIFYING THE DECISIONS OF THE PROPOSED COMPETITION BOARD WOULD BE A SOURCE OF SERIOUS CONCERN FOR CDA.

GOVERNMENT CLASSIFIED INFORMATION, WHETHER IN THE FORM OF DOCUMENTS OR THE ORAL EVIDENCE OF OFFICIALS, COULD BE UNCLASSIFIED

UNCLASSIFIED

PAGE 03 OTTAWA 04934 102004Z

PROVIDED ONLY UNDER CERTAIN CONDITIONS. THESE WOULD INCLUDE ASSURANCE OF CONFIDENTIALITY AND SAFEGUARDS AGAINST THE USE OF THE INFORMATION IN A MANNER CONTRARY TO CDN NATIONAL INTERESTS.

WITH RESPECT TO OTHER KINDS OF DOCUMENTS, PROHIBITION OF THEIR REMOVAL FROM CDA IN RESPONSE TO DIRECTIVES OF FOREIGN JUDICIAL OR ADMINISTRATIVE BODIES WOULD HAVE TO BE CONSIDERED UNLESS SOME MEANS CAN BE FOUND TO ENSURE THAT, WHERE THESE BODIES SEEK TO REACH INTO CDA, THEY DO NOT ACT IN A WAY PREJUDICIAL TO IMPORTANT CDN NATIONAL INTERESTS AND INCONSISTENT WITH THE PRINCIPLE OF INTERNATIONAL COMITY.

IN VIEW OF THE EFFECT OF THE GUIDE AND PUBLIC STATEMENTS OF SENIOR JUSTICE OFFICIALS CONCERNED WITH ANTI-TRUST, SOME MEANS SHOULD BE SOUGHT TO INFORM THE PRIVATE SECTOR OF THE ANTITRUST DIVISION'S SUPPORT FOR THE PRINCIPLES ENUNCIATED IN THE TIMBERLANE JUDGMENT CONCERNING THE

EXTRATERRITORIAL APPLICATION OF USA ANTITRUST LAWS. END
TEXT. ENDERS

UNCLASSIFIED

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ANTITRUST
Control Number: n/a
Copy: SINGLE
Sent Date: 10-Jun-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01-Jan-1960 12:00:00 am
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977OTTAWA04934
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770208-0208
Format: TEL
From: OTTAWA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770669/aaaaciha.tel
Line Count: 118
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 601e667f-c288-dd11-92da-001cc4696bcc
Office: ACTION JUSE
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 09-Nov-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 2195627
Secure: OPEN
Status: NATIVE
Subject: VISIT OF ATTORNEY GENERAL BELL - GOC CONCERNS IN ANTITRUST FIELD TO INSURE TIMELY RECEIPT EMBASSY REPEATING MESSAGE
TAGS: OVIP, CA, US, (BELL, GRIFFIN B)
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/601e667f-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009